



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC

Introduction

This hearing was convened by way of conference call in response to the tenants' application to cancel a Notice to End Tenancy for cause.

One of the tenants and the landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

Are the tenants entitled to have the Notice to End Tenancy for cause set aside?

Background and Evidence

The parties attending agree that this month to month tenancy started on May 01, 2009. Rent for this unit is \$1,050.00 per month and is due on the 1st day of each month.

The landlord testifies that the tenant was served a One Month Notice to End Tenancy for cause on June 14, 2013 by posting it to the tenants' door. This Notice has an

effective date of July 31, 2013. A copy of the Notice has been provided in evidence and shows the following reasons to end the tenancy:

- 1) The tenant or a person permitted on the residential property by the tenant has
 - (i) Significantly interfered with or unreasonably disturbed another occupant or the landlord of the residential property,
 - (ii) Seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.

The landlord testifies that the tenant has caused considerable disturbances to other tenants living in this five plex building. The tenant has a tendency to have a lot of friends over and they all gather drinking, smoking and smoking pot on the tenants' deck. The landlord testifies the tenant and his guests are very loud and swear at other tenants and the landlord's manager. The landlord testifies that on one occasion the landlord's manager who also lived in the five plex was approached by the tenant who the manager describes as intoxicated in his written account provided in evidence. The tenant tried to give yogurts to the manager's daughter but when these were refused by the manager the tenant became obnoxious swearing at the manager and eventually throwing the yogurts over the fence. This account has also been confirmed by another of the landlord's witnesses who has also provided a written statement.

The landlord testifies that the male tenant's behavior has caused other tenants to move from the building. When the landlord shows the vacant units to prospective tenants they are put off from renting as the male tenant is always outside drinking and smoking with his guests. The landlord testifies that the tenant has one particular person who either is staying or visiting regularly to the tenants unit who howls outside causing a disturbance to other tenants. This person has been nicknamed the Wolfman.

The landlord testifies that she has verbally warned the tenant about his friends coming to the unit on many different occasions. On another occasion the landlord testifies that a

woman was seen coming out of the tenants unit, high on drugs, who then proceeded to lie down in the hallway. The landlord testifies that she has also seen the tenant smoking inside his unit and testifies that the tenants unit is in a terrible condition.

The landlord testifies that due to the disturbances and the tenants and his guest's behavior the landlord served the tenants the One Month Notice. The landlord orally requests an Order of Possession for the rental unit. The landlord testifies that the manager has now left the five plex and no longer has any association with this tenancy.

The tenant testifies that all this trouble started over a lawnmower. The tenant testifies that he has looked after the lawn at the five plex for four years but then the landlord's manager took the lawn mower away from the tenant. The tenant testifies that he did swear at the landlord's manager. The tenant disputes that he makes noise late at night and testifies that the noise is made by kids who hang around outside the fence. The tenant testifies that he has had to call the police himself about these kids. The tenant agrees the landlord has spoken to him about noise but the tenant testifies that when he has his guests over the tenant tells them they have to leave by around 10.00 at night.

The tenant agrees that there was an incident over some yogurts the tenant was trying to give the managers daughter. The tenant testifies that he was trying to give the yogurts away to anyone who wanted them. The tenant testifies that he does not recall swearing at the manager. The tenant goes on to testify that he did swear at the manager as they both became angry.

The tenant testifies that he does have a friend who is nicknamed Wolfman but testifies that this friend does not live with the tenant but does come to visit a lot to help the tenant. The tenant testifies that he does not know anything about any incidents occurring when the landlord has been showing the vacant units.

The tenant agrees that he does sit outside with friends drinking beer and smoking and his friends also smoke pot. The tenant testifies that this occurs once or twice a week.

The tenant testifies that there are also other tenants living in the five plex who smoke pot. The tenant denies that he smokes pot and states he has an allergy to this substance. The tenant agrees that he has smoked inside his unit but disagrees that the unit is in a terrible condition.

Analysis

In this matter, the landlord has the burden of proof and must show (on a balance of probabilities) that grounds exist (as set out on the Notice to End Tenancy) to end the tenancy. This means that if the landlord's evidence is contradicted by the tenant, the landlord will generally need to provide additional, corroborating evidence to satisfy the burden of proof.

The tenant agrees that he has had altercations with the landlord's manager and has sworn at the manager on more than one occasion. The tenant also agrees that he has friends over once or twice a week and they drink beer, smoke and smoke pot outside until around 10.00 p.m. The landlord has provided some witness statements from other tenants and her manager who describe the male tenant's behavior and that of the tenant's guests. I landlord must protect the rights of all tenants to peace and quiet enjoyment of their rental units and when one tenant disturbs this peace then the landlord has a right to serve that offending tenant with a One Month Notice to End Tenancy.

By the tenants own admission there have been altercations and other disturbances involving either the male tenant or his guests. A tenant is responsible for any guests allowed on the property by the tenant and in this matter I find the tenant has not taken sufficient steps to control or limit the activities of his guests.

I further find on a balance of probabilities that the lawful right and interest of the landlord has been affected by the male tenant and his guests when the landlord shows the vacant units to prospective tenants and they are put off renting by the tenant and his

guests who sit drinking, smoking and smoking an illegal substance in full view of the landlord and the prospective tenants.

Consequently I find the landlord has sufficient evidence to support the reasons given on the Notice to End Tenancy and the tenants' application to set aside the One Month Notice to End Tenancy for cause is denied.

I refer the parties to s. 55(1) of the *Residential Tenancy Act* ("*the Act*") which states:

55 (1) *If a tenant makes an application for dispute resolution to dispute a landlord's notice to end a tenancy, the director must grant an order of possession of the rental unit to the landlord if, at the time scheduled for the hearing,*

(a) the landlord makes an oral request for an order of possession, and

(b) the director dismisses the tenant's application or upholds the landlord's notice.

As the tenant's application has been dismissed I therefore uphold the landlords oral request for an Order of Possession.

Conclusion

The effective date on the Notice to End Tenancy in this matter was July 31, 2013. As that date will have passed by the time the landlord receives this decision and order in the mail, I will grant an Order of Possession effective **2 days** after service on the tenant. This order must be served on the tenant and may be filed in the Supreme Court and enforced as an order of that Court.

The tenants' application is dismissed without leave to reapply.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: July 29, 2013

Residential Tenancy Branch

